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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,511	02/12/2002	Susana Salceda	DEX-0314	9814
26259	7590	02/08/2005	EXAMINER	
LICATLA & TYRRELL P.C. 66 E. MAIN STREET MARLTON, NJ 08053			LY, CHEYNE D	
			ART UNIT	PAPER NUMBER
			1631	

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/074,511

Applicant(s)

SALCEDA ET AL.

Examiner

Cheyne D Ly

Art Unit

1631

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 December 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-5,7 and 8.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet

Continuation of 2. NOTE: Claim 1, step (c), recites the new limitations of "an allelic variant of (a) or (b)", and "cancer" which introduce new issues that would require further consideration and/or search. It is noted that line 13 previously recited "breast cancer" which is different from the instant generic limitation of "cancer". Further, the instant amendment presents new claims 18 and 19 without canceling a corresponding number of finally rejected claims.

Continuation of 5. does NOT place the application in condition for allowance because:

Claims 1-5, 7, and 8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

NEW MATTER REJECTION.

This rejection is maintained with respect to claims 1-5, 7, and 8, as recited in the previous office action mailed September 01, 2004.

Applicant's argument on pages 013-014 has been fully considered and found to be unpersuasive because of the non-entry of the claim amendments.

Claims 1-5, 7, and 8 are rejected under 35 U.S.C. § 101 because the claimed invention lacks patentable utility due to its not being supported by a specific, substantial, and credible utility or, in the alternative, a well-established utility.

This rejection is maintained with respect to claims 1-5, 7, and 8, as recited in the previous office action mailed September 01, 2004.

Applicant's argument on pages 014-017 has been fully considered and found to be unpersuasive because of the non-entry of the claim amendments, and the non-entry of the amendment to the specification. Further, Applicant's argument directed to Examples 1 and 2 of the instant specification has been previously considered and responded to in the Office Action, mailed September 01, 2004.

LACK OF ENABLEMENT

Claims 1-5, 7 and 8 are rejected under 35 U.S.C. § 112, first paragraph as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the claimed sequence. For a sequence putatively assigned a biological function, even if correct, does not appear to be defined as to what use it is to be applied to. The significance of the sequence is undefined, further rendering it indiscernible how someone of skill in the art would use such an entity.

This rejection is maintained with respect to claims 1-5, 7, and 8, as recited in the previous office action mailed September 01, 2004.

Applicant's argument on pages 014-017 has been fully considered and found to be unpersuasive because of the non-entry of the claim amendments, and the non-entry of the amendment to the specification.

LACK OF WRITTEN DESCRIPTION

Claims 1-5, 7 and 8 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

This rejection is maintained with respect to claims 1-5, 7, and 8, as recited in the previous office action mailed September 01, 2004.

Applicant's argument on pages 017-019 has been fully considered and found to be unpersuasive because of the non-entry of the claim amendments.

Continuation of 10. Other: It is noted that the amendment to the specification, filed December 01, 2004, has not been entered because of the non-entry of the claim amendments as discussed above.

Ardin H. Marschel 2/2/05
ARDIN H. MARSCHEL
PRIMARY EXAMINER